

**19041**

| Number | Subdivision Number | Related Sections   | Staff Recom | Staff Comment  | Commentator Reference | Board Action |
|--------|--------------------|--|-------------|--|-----------------------|--------------|
| 1      | (a)(1)             |  |             | Unnecessary  | Item 1, Cal-tax       |              |
| 2      | (a)(2)             |  |             | No apparent difference   | Item 2, Cal-tax       |              |
| 3a     | (a)(3)             | 19041<br>11a,16a,<br>16b,17a,<br>17b, and<br>22<br><br>19044<br>2b, 18a<br>and 18b | Reject      | The proposed regulations have been written with a view of allowing a taxpayer to raise issues not considered in the audit. This language would limit staff inquiry into those issues. In addition, staff believes that at times it is appropriate to pursue other adjustments that were not examined at audit because they arise only as a result of the issues raised by the protest. An example would be where the auditor concludes that a single unitary business exists based upon similar relationships between several types of businesses. The taxpayer protests that one of the several lines is not unitary. It appears to be appropriate to explore whether the other lines should be treated as unitary. | Deloitte & Touche     |              |
| 3b     |                    | 19041<br>3a, 11,<br>16a,16b,<br>17a,17b,<br>22<br><br>19044<br>18a                 | Reject      | First sentence unnecessary<br><br>The proposed alternatives would only allow for requests for information if the information had been requested at audit. Even in the case of multistate field audits only one-third of the notices of proposed assessment are protested. Efficiency in the audit process does not allow all audits to be done as if they were going to be protested. To do so would be intrusive to taxpayers and resource intensive for the department. In addition, this limitation would not allow the department to develop facts on issues that were not audited.  | Item 3, Cal-tax       |              |

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| 4a | (a)(5) | 19044<br>18a and<br>18b  | Reject | First The proposed alternatives would only allow for requests for information if the information had been requested at audit. Even in the case of multistate field audits only one-third of the notices of proposed assessment are protested. Efficiency in the audit process does not allow all audits to be done as if they were going to be protested. To do so would be intrusive to taxpayers and resource intensive for the department. In addition, this limitation would not allow the department to develop facts on issues that were not audited. | Deloitte &Touche |  |
|    |        | 19041<br>4b, 18a,<br>18b | Reject | End Staff agrees with the statement that there may not be a duty to create records that were not maintained, it does not, however, accept the statement that no inference is appropriate regarding a failure to have had or maintain records. The failure to maintain records is relatively commonplace in cases of criminal conduct and staff believes it is appropriate to argue in favor of an inference in such circumstances.  |                  |  |
| 4b |        | 19041<br>4a,<br>18a,18b  | Reject | First two inserts unnecessary<br><br>End Staff agrees with the statement that there may not be a duty to create records that were not maintained, it does not, however, accept the statement that no inference is appropriate regarding a failure to have had or maintain records. The failure to maintain records is relatively commonplace in cases of criminal conduct and staff believes it is appropriate to argue in favor of an inference in such circumstances.   | Item 4 Cal-tax   |  |
| 5  | (b)(5) |                          | Reject | There is no good cause exception in the statute.  | Item 5 Cal-tax   |  |
| 6  | (b)(6) |                          | Reject | In the large cases it frequently takes more than 30 days to collect the files an determine whether the case will be assigned to Legal or handled by Audit's hearing unit.   | Item 6 Cal-tax   |  |
| 7a | (c)    |                          |        | Unnecessary   | Ernest & Young   |  |

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| 7b  |        |  | Reject | The regulation was drafted with a preference for filing by mail. Filing by mail allows for better identification and control of protests.  | Item 7, Cal-tax   |  |
| 8   | (d)(3) | 19044<br>1, 4a, 4b<br>and 5                                | Reject | The statute, 19044, states that an oral hearing shall be granted if it is requested in the protest. Staff's proposed regulations allow for the granting of an oral hearing in a number of circumstances and provided sufficient flexibility and assurance of a hearing when coupled with the requirement that discretion be liberally exercised. At some point, however, there has to be a means to bring an end to protest proceedings. | Item 8, Cal-tax   |  |
| 9   | (d)(5) |  |        | No apparent difference   | Item 9, Cal-tax   |  |
| 10  | (d)(6) |  |        | No apparent difference   | Item 9, Cal-tax   |  |
| 11a | (e)(2) | 19041<br>3a, 3b,<br>11b, 12<br><br>19044<br>18a and<br>18b | Reject | The limitation is based upon the language of the statute, 19041, which sets a time period for filing a protest and requires that the grounds be specified. Staff' proposed regulations sets forth a number of circumstances that allow taxpayers the right to introduce new grounds and, in addition, gives the department discretion to allow new grounds with the direction that this discretion is to be liberally exercised.         | Deloitte & Touche |  |
| 11b |        | 19041<br>3a, 3b<br>11a, 12,<br><br>19044<br>19             | Reject | The limitation is based upon the language of the statute, 19041, which sets a time period for filing a protest and requires that the grounds be specified. Staff' proposed regulations sets forth a number of circumstances that allow taxpayers the right to introduce new grounds and, in addition, gives the department discretion to allow new grounds with the direction that this discretion is to be liberally exercised.         | Item 10, Cal-tax  |  |

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| 12  | (e)(4)(A) | 19041<br>11a, 11b<br><br>19044<br>17 | Reject | <p>The limitation is based upon the language of the statute, 19041, which sets a time period for filing a protest and requires that the grounds be specified. Staff' proposed regulations sets forth a number of circumstances that allow taxpayers the right to introduce new grounds and, in addition, gives the department discretion to allow new grounds with the direction that this discretion is to be liberally exercised.</p> <p>No benefit to the department in postponing a hearing. Time is just needed to make inquiries.</p>   | Item 10, Cal-Tax<br>Item 11, Cal-tax |  |
| 13  | (f)(1)    |                                      |        | No apparent difference  | Item 12, Cal-tax                     |  |
| 14  | (f)(2)(A) |                                      |        | No apparent difference  | Item 13, Cal-tax                     |  |
| 15  | (f)(3)(C) |                                      | Reject | A requirement to perfect only arises when the department makes a request. The items required for perfection are not burdensome and must be identified by the department. If there is no request to perfect, there is no duty.   | Item 15, Cal-tax                     |  |
| 16a | (g)(1)    | 19041<br>3a, 3b,<br>4a, 16a          | Reject | <p>First two The proposed alternatives would only allow for requests for information if the information had been requested at audit. Even in the case of multistate field audits only one-third of the notices of proposed assessment are protested. Efficiency in the audit process does not allow all audits to be done as if they were going to be protested. To do so would be intrusive to taxpayers and resource intensive for the department. In addition, this limitation would not allow the department to develop facts on issues that were not audited.</p> <p>End unnecessary</p> | Deloitte & Touche                    |  |

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| 16b |        | 19041<br>3a, 3b,<br>16b | Reject | <p>First The proposed alternatives would only allow for requests for information if the information had been requested at audit. Even in the case of multistate field audits only one-third of the notices of proposed assessment are protested. Efficiency in the audit process does not allow all audits to be done as if they were going to be protested. To do so would be intrusive to taxpayers and resource intensive for the department. In addition, this limitation would not allow the department to develop facts on issues that were not audited.</p> <p>End unnecessary</p> | Item 15, Cal-tax  |  |
| 17a | (g)(2) | 19041<br>3a, 3b,<br>16a | Reject | <p>The proposed alternatives would only allow for requests for information if the information had been requested at audit. Even in the case of multistate field audits only one-third of the notices of proposed assessment are protested. Efficiency in the audit process does not allow all audits to be done as if they were going to be protested. To do so would be intrusive to taxpayers and resource intensive for the department. In addition, this limitation would not allow the department to develop facts on issues that were not audited.</p>                              | Deloitte & Touche |  |

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| 17b |           | 19041<br>3a, 3b,<br>16b    | Reject | First The proposed alternatives would only allow for requests for information if the information had been requested at audit. Even in the case of multistate field audits only one-third of the notices of proposed assessment are protested. Efficiency in the audit process does not allow all audits to be done as if they were going to be protested. To do so would be intrusive to taxpayers and resource intensive for the department. In addition, this limitation would not allow the department to develop facts on issues that were not audited. | Item 15, Cal-tax |  |
|     |           |                            | Reject | Staff believes that taxpayers should be advised of a duty to respond. Staff also notes that the complexity of the protest should be taken into consideration in determining the periods for a response both as to the initial time period and extensions.   |                  |  |
|     |           |                            | Reject | Taxpayers should be advised of the possible consequences of a failure to respond.   |                  |  |
| 18  | (g)(2)(A) | 19041<br>17b, 19<br>and 21 | Reject | Staff also notes that the complexity of the protest should be taken into consideration in determining the periods for a response both as to the initial time period and extensions.   | Andal            |  |
| 19  | (g)(2)(B) | 19041<br>17b, 18<br>and 21 | Reject | Staff also notes that the complexity of the protest should be taken into consideration in determining the periods for a response both as to the initial time period and extensions.   | Andal            |  |
| 20  | (g)(2)(C) | 19044<br>16a               | Reject | Approval level is inappropriate and unnecessary   | Andal            |  |
| 21  | (g)(3)`   | 19041<br>17b, 18<br>and 19 | Reject | Staff believes that taxpayers should be advised of a duty to respond. Staff also notes that the complexity of the protest should be taken into consideration in determining the periods for a response both as to the initial time period and extensions.   | Item 16, Cal-tax |  |
|     |           |                            | Reject | Taxpayers should be advised of the possible consequences of a failure to respond.   |                  |  |

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| 22  | (g)(3)(A)  |                                 | Reject | he proposed alternatives would only allow for requests for information if the information had been requested at audit. Even in the case of multistate field audits only one-third of the notices of proposed assessment are protested. Efficiency in the audit process does not allow all audits to be done as if they were going to be protested. To do so would be intrusive to taxpayers and resource intensive for the department. In addition, this limitation would not allow the department to develop facts on issues that were not audited. | Deloitte & Touche |  |
| 23  | (h)(1)     |                                 |        | No apparent difference   | Item 17, Cal-tax  |  |
| 24  | (h)(2)(A)  |                                 | Reject | There is nothing in the statute that allows for this result. The 60-day period for issuing a letter of determination is appropriate, the consequences of a failure to do so are not.   | Item 18, Cal-tax  |  |
| 25  | (h)(2)(c)  | 19041<br>26a,<br>26b, and<br>27 | Reject | The proposed regulation should be in conformity with FTB Notice 99-1 as to the various time limits and the reasons for tolling.  | Andal             |  |
| 26a | (h)(2)(D)1 | 19041<br>25, 26b<br>and 27      | Reject | The proposed regulation should be in conformity with FTB Notice 99-1 as to the various time limits and the reasons for tolling.  | Andal             |  |
| 26b |            | 19041<br>25, 26a<br>and 27      | Reject | There should be an opportunity to develop information on issues not considered at protest and tolling should be consistent with FTB Notice 99-1.   | Item 19 Cal-tax   |  |
| 27  | (h)(2)(D)2 | 19041<br>25, 26a,<br>26b        | Reject | There is a need to develop information. The proposed regulation should be in conformity with FTB Notice 99-1 as to the various time limits and the reasons for tolling.  | Item 19, Cal-Tax  |  |

# 19044

| Number | Subdivision Number | Related Sections                     | Staff Recom | Staff Comment  | Commentator Reference | Board Action |
|--------|--------------------|--------------------------------------|-------------|--|-----------------------|--------------|
| 1      | (a)(1)             | 19041 8<br>19044<br>4a, 4b,<br>and 5 | Reject      | The statute, 19044, states that an oral hearing shall be granted if it is requested in the protest. Staff's proposed regulations allow for the granting of an oral hearing in a number of circumstances and provided sufficient flexibility and assurance of a hearing when coupled with the requirement that discretion be liberally exercised. At some point, however, there has to be a means to bring an end to protest proceedings.   | Item 1, Cal-tax       |              |
| 2a     | (a)(3)             | 19041<br>3a, 3b                      | Reject      | The proposed regulations have been written with a view of allowing a taxpayer to raise issues not considered in the audit. This language would limit staff inquiry into those issues. In addition, staff believes that at times it is appropriate to pursue other adjustments that were not examined at audit because they arise only as a result of the issues raised by the protest. An example would be where the auditor concludes that a single unitary business exists based upon similar relationships between several types of businesses. The taxpayer protests that one of the several lines is not unitary. It appears to be appropriate to explore whether the other lines should be treated as unitary. | Deloitte & Touche     |              |



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| 2b |        | 129041<br>3b                        | Reject | <p>First unnecessary</p> <p>Second, First The proposed alternatives would only allow for requests for information if the information had been requested at audit. Even in the case of multistate field audits only one-third of the notices of proposed assessment are protested. Efficiency in the audit process does not allow all audits to be done as if they were going to be protested. To do so would be intrusive to taxpayers and resource intensive for the department. In addition, this limitation would not allow the department to develop facts on issues that were not audited..</p> | Item 2, Cal-tax   |  |
| 3  | (a)(4) |                                     |        | Statement of philosophy on time limits appears appropriate.  | Item 3, Cal-tax   |  |
| 4a | (b)(1) | 19041 8<br><br>19044 1,<br>4b and 5 | Reject | The statute, 19044, states that an oral hearing shall be granted if it is requested in the protest. Staff's proposed regulations allow for the granting of an oral hearing in a number of circumstances and provided sufficient flexibility and assurance of a hearing when coupled with the requirement that discretion be liberally exercised. At some point, however, there has to be a means to bring an end to protest proceedings.   | Deloitte & Touche |  |
| 4b |        | 19041 8<br><br>19044 1,<br>4a, 5    | Reject | The statute, 19044, states that an oral hearing shall be granted if it is requested in the protest. Staff's proposed regulations allow for the granting of an oral hearing in a number of circumstances and provided sufficient flexibility and assurance of a hearing when coupled with the requirement that discretion be liberally exercised. At some point, however, there has to be a means to bring an end to protest proceedings.   | Item 4, Cal-tax   |  |

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|----|------------|-------------------------------------|--------|--|------------------|--|
| 5  | (b)(2)     | 19041 8<br>19044 1,<br>4a and<br>4b | Reject | The statute, 19044, states that an oral hearing shall be granted if it is requested in the protest. Staff's proposed regulations allow for the granting of an oral hearing in a number of circumstances and provided sufficient flexibility and assurance of a hearing when coupled with the requirement that discretion be liberally exercised. At some point, however, there has to be a means to bring an end to protest proceedings. | Item 5, Cal-tax  |  |
| 6  | (b)(3)     |                                     |        | Unnecessary  | Item 6, Cal-tax  |  |
| 7  | (c)(1)     | 19044 8                             | Reject | Staff's proposed language conforms to the requirements of the statute.   | Item 7, Cal-tax  |  |
| 8  | (c)(2)     | 19044 7                             |        | Staff does not understand what objection might exist to this language.   | Item 7, Cal-tax  |  |
| 9  | (d)(1)     |                                     | Reject | Staff believes the amount of time to schedule a hearing should take into consideration the amount of time necessary to provide information   | Item 8, Cal-tax  |  |
| 10 | (d)(3)     |                                     | Reject | It is not always possible for the department to have access to its offices at other than normal business hours   | Item 9, Cal-tax  |  |
| 11 | (f)(3)     |                                     | Reject | No need has been shown for this. It is a management decision, not a proper subject for a regulation.   | Item 10, Cal-tax |  |
| 12 | (h)(4)     |                                     | Reject | Circumstances arise where it is necessary to limit the number of representatives at a hearing to allow the hearing to proceed orderly and effectively.   | Item 11, Cal-tax |  |
| 13 | (h)(5)(A)  |                                     |        | No apparent difference   | Item 12, Cal-tax |  |
| 14 | (h)(5)(B)  |                                     |        | No apparent difference   | Item 12, Cal-tax |  |
| 15 | (h)(6)     |                                     | Reject | Transcribing hearings increases the level of formality. Oral statements are not taken under oath and the proceedings are not intended to be adversarial  | Item 13, Cal-tax |  |
| 16 | (h)(8)(A)3 |                                     | Reject | Protest hearings are not intended to be adversarial in nature. Auditors may be located some distance from the site of the protest hearing and it is not clear what they would add beyond what is in their audit reports. In hearings held by the Legal Branch, audit branch personnel are usually assigned to assist.  | Item 14, Cal-tax |  |

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| 17  | (h)(8)(B)1 |   | Reject | Language is intended to forewarn taxpayers that submitting material to the FTB is not the same thing as submitting to the Board of Equalization of the courts   | Item, 15, Cal-tax |  |
| 18a | (h)(9)     | 19041<br>3a, 3b,<br>4a, 4b,<br>11a, 11b | Reject | First two The proposed alternatives would only allow for requests for information if the information had been requested at audit. Even in the case of multistate field audits only one-third of the notices of proposed assessment are protested. Efficiency in the audit process does not allow all audits to be done as if they were going to be protested. To do so would be intrusive to taxpayers and resource intensive for the department. In addition, this limitation would not allow the department to develop facts on issues that were not audited. | Deloitte & Touche |  |
|     |            |   | Reject | End Approval level is inappropriate and unnecessary   |                   |  |

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| 18b |         | 19041<br>3a, 3b,<br>4a, 4b,<br>11a,<br>11b, 21 | Reject | <p>First The proposed alternatives would only allow for requests for information if the information had been requested at audit. Even in the case of multistate field audits only one-third of the notices of proposed assessment are protested. Efficiency in the audit process does not allow all audits to be done as if they were going to be protested. To do so would be intrusive to taxpayers and resource intensive for the department. In addition, this limitation would not allow the department to develop facts on issues that were not audited.</p> <p>"relevancy" insert unnecessary</p> | Item 16, Cal-tax |  |
|     |         |  | Reject | <p>End Staff agrees with the statement that there may not be a duty to create records that were not maintained, it does not, however, accept the statement that no inference is appropriate regarding a failure to have had or maintain records. The failure to maintain records is relatively commonplace in other types of cases and staff believes it is appropriate to argue in favor of an inference in such circumstances.</p>   |                  |  |
| 19  | (h)(10) | 19041<br>11a, 11b<br>and 12                    | Reject | <p>Staff agrees that hearings should only be terminated as a last resort but there can be appropriate reasons other than public safety. Termination in receiving testimony is done only in the context of it being repetitious. Criticism of the department is normally not a proper subject of a protest hearing. The purpose of the hearing is to determine the correct amount tax and the correctness of the grounds raised by the taxpayer in its protest. The outcome of the protest should not be effected by criticisms of the department.</p>  | Item 17, Cal-tax |  |

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| 20 | (h)(11) |  | Reject | Hearing officer's reports are not prepared as part of an official record and are normally not used as evidence. In most circumstances they reflect the deliberative process of the hearing officer and staff believes that such reports are generally not legally subject to disclosure. It is not clear what purpose will be served by providing a copy of the hearing officer's notes or reports. | Item 18, Cal-tax |  |
| 21 | (h)(12) |  |        | No apparent difference  | Item 19, Cal-tax |  |